

**DEPARTMENT OF CORPORATIONS**  
*California's Investment and Financing Authority*



**DEMETRIOS A. BOUTRIS**  
**California Corporations Commissioner**  
**Sacramento, California**

IN REPLY REFER TO:

FILE NO: Alpha

December 31, 2002

RE: A Study of the Consumer Credit Counseling Industry in California

To Consumer Credit Counseling Organizations that may be engaging in business in California:

The California Department of Corporations ("Department") seeks your assistance with a study of the consumer credit counseling industry in California regarding the establishment of fees for debt management plans and debt settlement plans. The Department is currently conducting a survey of consumer credit counseling organizations and debtors for the purpose of this study, and requests your participation in the survey. The Department requests that the enclosed survey of consumer credit counseling organizations be returned no later than **January 31, 2003**.

In addition, the Department requests that you make the enclosed "Survey of Debtors" available to debtors using your services.

By way of background, the California Legislature has directed the Department to conduct this study in AB 2293 (Liu, Chap. 779, Stats. 2002). AB 2293 substantially amends the requirements for the exemption from prorater licensing under the Check Sellers, Bill Payers and Proraters Law (the "CSBPPL," California Financial Code Section 12000, et seq.) for specified nonprofit consumer credit counseling organizations, and additionally requires the Department to conduct a study of industry fees.

Section 11 of AB 2293 provides as follows:

*The Department of Corporations shall conduct a study of the consumer credit counseling industry in California and make recommendations to the Legislature on or before March 1, 2003, regarding the establishment of fees for debt management plans and debt settlement plans. This study shall be conducted in consultation with the consumer credit counseling industry and consumer organizations.*

- ♦ Securities ♦ Franchises ♦ Off-Exchange Commodities ♦ Investment and Financial Services ♦
- ♦ Independent Escrows ♦ Consumer and Commercial Finance Lending ♦ Residential Mortgage Lending ♦

SACRAMENTO 95814-4052  
1515 K STREET, SUITE 200  
(916) 445-7205

SAN FRANCISCO 94102-5303  
1390 MARKET STREET  
(415) 557-3787

LOS ANGELES 90013-2344  
320 WEST 4<sup>TH</sup> STREET  
(213) 576-7500

SAN DIEGO 92101-3697  
1350 FRONT STREET  
(619) 525-4233

Pursuant to this directive, the Department is seeking information from consumer credit counseling organizations, debtors and consumer groups to assist the Department in making recommendations to the Legislature regarding the establishment of fees.

The CSBPPL requires a prorater to obtain a license from the Department. Under the CSBPPL, a prorater is defined as follows:

A prorater is a person who, for compensation, engages in whole or in part in the business of receiving money or evidences thereof for the purpose of distributing the money or evidences thereof among creditors in payment or partial payment of the obligations of the debtor. (California Financial Code Section 12002.1)

Section 12100(j) of the CSBPPL sets forth an exemption from the licensing requirement for "nonprofit community service organizations," commonly known as consumer credit counseling organizations, provided that they meet the requirements of the exemption. One such requirement for claiming the exemption prior to the effective date of AB 2293 is that any fee for arranging or administering a debt settlement plan be a charge for administrative services only, and such charge be limited to 6.5 percent of the money disbursed monthly, or twenty dollars (\$20) per month, whichever is the lesser, to offset expenses.

After the effective date of AB 2293 (January 1, 2003), for a consumer credit counseling organization to rely upon the licensing exemption the organization must comply with the following limitations regarding the amounts that may be received from a debtor for services:

The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization's actual and necessary expenses for the services described in subdivision (c):<sup>1</sup> a one-time sum not to exceed fifty dollars (\$50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 6.5 percent of the money disbursed monthly, or twenty dollars (\$20) per month, whichever is less, and for debt settlement plans a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. For purposes of this subdivision, a household shall be considered one debtor. The fees allowed pursuant to subdivision (d) of Section

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<sup>1</sup> Subdivision (c) provides as follows: (c) The nonprofit community service organization has as its principal functions the following: (1) Consumer credit education. (2) Counseling on consumer credit problems and family budgets. (3) Arranging or administering debt management plans. "Debt management plan" means a method of paying debtor's obligations in installments on a monthly basis. (4) Arranging or administering debt settlement plans. "Debt settlement plans" means a method of paying debtor's obligations in a negotiated amount to each creditor on a one-time basis.

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12104 [this subdivision] shall be the only fees that may be charged by a nonprofit community service organization for any services related to a debt management plan or a debt settlement plan. (California Financial Code Section 12104(d), effective January 1, 2003)

Whereas prior to AB 2293, a "debt settlement plan" includes what is commonly now referred to as a debt management plan, AB 2293 adds definitions for a "debt settlement plan" and a "debt management plan" to clarify the distinctions between the activities, for purposes of the CSBPPL licensing exemption.

Attached are questions designed to assist the Department in formulating recommendations to the Legislature regarding the establishment of fees for debt management plans and debt settlement plans in the consumer credit counseling industry. Please complete the survey and return the survey to the Department by **January 31, 2003**.

Please make copies of the enclosed "Survey of Debtors" available to debtors utilizing your services until January 31, 2003.

Very truly yours,

DEMETRIOS A. BOUTRIS  
California Corporations Commissioner

By \_\_\_\_\_  
COLLEEN E. MONAHAN  
Corporations Counsel  
Office of Law and Legislation  
(916) 322-3553

CM:kc

DEPARTMENT OF CORPORATIONS  
STATE OF CALIFORNIA

SURVEY OF THE CONSUMER CREDIT COUNSELING INDUSTRY  
REGARDING THE ESTABLISHMENT OF FEES FOR DEBT MANAGEMENT  
PLANS AND DEBT SETTLEMENT PLANS

RESPONSE DATE: Please respond by **January 31, 2003**

PLEASE MAIL YOUR RESPONSE TO THE FOLLOWING:

Department of Corporations, State of California  
Attn: Kathy Womack, Associate Program Analyst  
Office of Law and Legislation  
1515 K Street, Suite 200  
Sacramento, CA 95814

*"The Department of Corporations shall conduct a study of the consumer credit counseling industry in California and make recommendations to the Legislature on or before March 1, 2003, regarding the establishment of fees for debt management plans and debt settlement plans. This study shall be conducted in consultation with the consumer credit counseling industry and consumer organizations." Assembly Bill 2293 (Chapter 779, Statutes of 2002)*

The California Legislature has directed the Department of Corporations ("Department") to conduct a study of the consumer credit counseling industry in California, as set forth above. This survey is to assist the Department in formulating recommendations to the Legislature on the establishment of fees for debt management and debt settlement plans in California.

Please complete the following survey and return it to the Department by January 31, 2003. If additional space is needed to answer any question, please attach additional pages.

General Information

1. Contact Information

Name of Organization \_\_\_\_\_  
Address \_\_\_\_\_  
Contact person \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail \_\_\_\_\_

2. Are you a nonprofit organization? ☐ yes ☐ no
- a) If yes, please answer the following questions:  
☐ public benefit ☐ mutual benefit ☐ other
- b) Are you a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code?  
☐ yes ☐ no
3. Are you licensed as a prorater in California? ☐ yes ☐ no
4. Do you engage in the prorating business in California in reliance on the exemption in Section 12100(j) of the Financial Code (the exemption for nonprofit entities meeting specified requirements)? ☐ yes ☐ no
5. Do you plan on engaging in the prorating business in California after 1/1/03 (the effective date of AB 2293) or in the future?  
☐ yes ☐ no ☐ undecided
- a) What incremental costs, if any, will you incur in doing business in California as a result of AB 2293? \_\_\_\_\_
- b) Why? \_\_\_\_\_
6. In what states do you currently provide prorating services?
- ☐ All states
- ☐ All states except (identify) \_\_\_\_\_
- ☐ the following states (list) \_\_\_\_\_
7. How are you funded in addition to fees? \_\_\_\_\_

The following questions are solely applicable to nonprofit consumer credit counseling organizations claiming the licensing exemption, or intending to claim the exemption in the future.

### **Debt Management Fees**

California law limits debt management fees charged to a debtor to 6.5% of outstanding debt or \$20, whichever is less.

8. Is this cap at the appropriate level to safeguard the interest of debtors who are facing financial hardship, while providing adequate income for the nonprofit organization to remain in existence?

☐ Yes ☐ No

a) If "no," why not? (Please check all that apply)

☐ the nonprofit organization does not receive money from creditors

☐ the money received from creditors and the capped fees from debtors does not cover the cost of operations

☐ the nonprofit organization does not receive funding from grants or fundraising

☐ Other (describe) \_\_\_\_\_

\_\_\_\_\_

9. If the Legislature were to increase the fee cap, what should such an increase be based upon? (Please check all that apply)

☐ Fee caps in other states

If you select this option, please provide information on the other state(s) fee cap, including the name of the state, the fee cap, and, if known, the regulatory agency and citation to where the cap is located. \_\_\_\_\_

\_\_\_\_\_

☐ A cost of living increase

If you select this option, please describe the recommended cost of living increase: \_\_\_\_\_

\_\_\_\_\_

☐ Free market approach – remove the fee cap entirely

If you select this option, please explain:

a) How this approach is consistent with the rationale for providing an exemption from licensure for certain nonprofit organizations whose ability to charge fees are restricted \_\_\_\_\_

\_\_\_\_\_

b) How debtors will be protected from excessive fees that will increase a debtor's debts \_\_\_\_\_

\_\_\_\_\_

☐ Other (describe) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. If the Legislature were to increase the fee cap, what fee cap do you recommend? \_\_\_\_\_

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a) Why? \_\_\_\_\_

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11. If you recommend an increase to the percentage of outstanding debt permitted as a fee, please explain the reasoning as to what would justify the recommended increase. \_\_\_\_\_

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12. What percentage of your budget is derived from fees from debtors on debt management plans? \_\_\_\_\_

a) What is the percentage of debtors seeking debt management and counseling services from you that are placed on debt management plans?

b) What is the criteria for participation in a debt management plan? \_\_\_\_\_

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13. What percentage of your budget is derived from income from creditors for debtors on debt management plans? \_\_\_\_\_

### **Education/Counseling Fees**

14. Do you currently provide counseling services to debtors? ☐ yes ☐ no

a) If yes, on what subjects do you provide counseling? \_\_\_\_\_

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15. Do you charge a fee for counseling services? ☐ yes ☐ no

a) If yes, what is the fee? \_\_\_\_\_

16. If you charge different fees for different educational services, please list the services and the fees charged. If the fees are on a scale, please provide the scale. \_\_\_\_\_

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17. Do you provide any education or counseling services that are unrelated to consumer credit education? ☐ yes ☐ no  
If yes, please describe services and associated fees. \_\_\_\_\_

18. Do you require debtors to participate in any education or counseling service prior to enrolling in a debt management plan or debt settlement plan?  
☐ yes ☐ no  
a) If yes, explain the requirement. \_\_\_\_\_

19. What percentage of your budget is derived from education or counseling services? \_\_\_\_\_

AB 2293 permits a consumer credit counselor to receive from a debtor a one-time sum not to exceed fifty dollars (\$50) for education and counseling combined in connection with debt management or debt settlement services.

20. Is this fee sufficient to cover the cost of providing the service? ☐ yes ☐ no  
a) If you answer no, please answer the following questions.  
1) What is the cost to the organization for providing education and counseling in connection with debt management or debt settlement services? \_\_\_\_\_  
2) How is this cost figured? \_\_\_\_\_  
3) What fee cap is reasonable for providing such education and counseling? \_\_\_\_\_  
4) What is the basis for this recommendation? \_\_\_\_\_

### Debt Settlement Plans

AB 2293 allows an organization to receive from a debtor a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. "Debt settlement plan" is defined to mean a method of paying a debtor's obligations in a negotiated amount to each creditor on a one-time basis.

21. Is this fee sufficient to cover the cost of providing the service? ☐ yes ☐ no  
a) If not, why not? \_\_\_\_\_  
b) What is the cost of providing this service? \_\_\_\_\_  
c) How is this cost figured? \_\_\_\_\_



- d) What is the percentage of debtors utilizing your debt management and counseling services who participate in a debt settlement plan? \_\_\_\_\_
- e) What is the criteria for a debtor to participate in a debt settlement plan? \_\_\_\_\_

22. What fee cap is reasonable for providing debt settlement services? \_\_\_\_\_
- a) What is the basis for this recommendation? \_\_\_\_\_

### **Additional Information**

23. Do you receive any funding from grants or fundraising? ☐ yes ☐ no
- a) If yes, provide information on the grants, including the name of the grantor, the amount received, and whether the source of funding is guaranteed or not \_\_\_\_\_

24. Do banks, stet or other creditors pay you for facilitating payments from debtors?
- ☐ yes ☐ no
- a) If yes, provide the names of the creditors and the standard reimbursement terms. (If the list is long, provide a representative sample.) \_\_\_\_\_

- b) If not, why not? \_\_\_\_\_

25. List all affiliates, and indicate whether the entity is nonprofit or for profit, whether it is a bank or other creditor, and the affiliation. \_\_\_\_\_

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26. Do you provide any services other than consumer credit education, counseling on consumer credit problems and family budgets, and arranging or administering debt management or debt settlement plans?

☐ Credit Repair

☐ Housing Counseling or Assistance

☐ Family Counseling

☐ Other (please describe) \_\_\_\_\_

a) If yes, what are the fees charged for other services? \_\_\_\_\_

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#### Contributions

27. Do you receive voluntary contributions? ☐ yes ☐ no

a) If yes, do you request, recommend, or suggest that debtors make voluntary contributions? ☐ yes ☐ no

1) If yes, what is the amount requested/recommended/suggested? \_\_\_\_\_

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b) Other than from debtors, from what other sources do you receive voluntary contributions? \_\_\_\_\_

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28. What is your cost for arranging a debt management plan for a debtor?

\$ \_\_\_\_\_ average cost to initiate plan, per debtor

\$ \_\_\_\_\_ average cost to administer plan monthly, per debtor

29. What is your cost for administering a debt settlement plan?

\$ \_\_\_\_\_ average cost per debtor

30. How many debtors do you service annually through counseling, debt management and debt settlement plans?

\_\_\_\_\_ Counseling

\_\_\_\_\_ Debt management plans

\_\_\_\_\_ Debt settlement plans

31. For 501(c)(3) organizations, please provide a copy of your Annual Information Return. Note, however, that the Department is unable to provide reimbursement for copying and postage, and therefore this request is not to be construed as a request for the document pursuant to Internal Revenue Code Section 6104. If your Annual Information Return is available through the Internet, please provide the site. \_\_\_\_\_

32. For organizations that are not subject to Section 501(c)(3) of the Internal Revenue Code, please provide a copy of your financial statements (consolidated).

33. Please provide any additional information that you believe will assist the Department in making recommendations to the California Legislature regarding the establishment of fees for debt management and debt settlement plans. \_\_\_\_\_

[illegible]

Thank you for your participation in this survey. If you have questions regarding this survey, please contact, the Office of Law and Legislation at (916) 322-3553.

## Survey of Debtors

The California Department of Corporations is conducting a survey of debtors who use the services of consumer credit counseling organizations. The Department must make recommendations to the California Legislature regarding the establishment of fees for debt management and debt settlement plans. (Debt management plans are plans where debtors' funds are distributed to creditors monthly, whereas debt settlement plans involve negotiating and settling all of a debtor's debts in a lump-sum payment.)

Please complete this survey and return it by **January 31, 2003** to the following:

Department of Corporations, State of California  
Attn: Kathy Womack, Associate Program Analyst  
Office of Law and Legislation  
1515 K Street, Suite 200  
Sacramento, CA 95814

### 1. Your Information

Name \_\_\_\_\_ Address \_\_\_\_\_  
Phone \_\_\_\_\_ E-mail \_\_\_\_\_

### 2. What services are you receiving from a consumer credit counseling organization?

- ☐ I am enrolled in a **Debt Management Plan**  
☐ My debts are being settled through a lump-sum **Debt Settlement Plan**  
☐ I am receiving or have received **Education or Counseling** related to debt management or settlement  
☐ Other (describe) \_\_\_\_\_

### 3. What amount(s) have you paid for the services you are receiving? (check all that apply)

- ☐ An enrollment fee of \$ \_\_\_\_\_ ☐ A monthly fee of \$ \_\_\_\_\_  
☐ A counseling fee of \$ \_\_\_\_\_ ☐ A voluntary contribution of \$ \_\_\_\_\_  
☐ Other (please describe) \_\_\_\_\_

### 4. California limits the fee that may be charged monthly for the service of paying a debtor's bills to \$20. This cap has not increased in 20 years. What is a reasonable fee limit, and why? \_\_\_\_\_

### 5. California limits the fee that may be charged for a debt settlement plan to 15% of the amount of the debt forgiven. Is this limit reasonable?

☐ Yes ☐ No ☐ Too Low ☐ Too High I Recommend \_\_\_\_\_

### 6. California limits the amount that may be charged for education or counseling in connection with debt management or debt settlement services to a one-time sum of \$50. Is this amount reasonable?

☐ Yes ☐ No ☐ Too Low ☐ Too High I Recommend \_\_\_\_\_

### 7. Do you believe that caps on fees are necessary or beneficial? Why or why not? \_\_\_\_\_

### 8. What is your unsecured debt (i.e., excluding home and car loans)? \$ \_\_\_\_\_

Thank you for your participation in this survey. If you have questions regarding this survey, please contact the Office of Law and Legislation at (916) 322-3553.